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File # *Sen. Force*

AMENDING SECTION 22 OF THE ORGANIC ACT OF GUAM

JUNE 7, 1954.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MILLER of Nebraska, from the Committee on Interior and Insular Affairs, submitted the following

R E P O R T

[To accompany H. R. 8634]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H. R. 8634) to amend section 22 of the Organic Act of Guam, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendments are as follows:

Page 1, line 11, after "Guam" insert the following:

, and except further that the terms "attorney for the government" and "United States attorney", as used in the Federal Rules of Criminal Procedure, shall, when applicable to cases arising under the laws of Guam, mean the Attorney General of Guam or such other person or persons as may be authorized by the laws of Guam to act therein.

Page 2, following line 6, add the following new section:

SEC. 4. If any particular provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

EXPLANATION OF THE BILL

The purpose of H. R. 8634, as amended, is to amend section 22 of the Organic Act of Guam (48 U. S. C. sec. 1424).

The organic act was enacted in 1950. Section 22 provides for the establishment of the District Court of Guam; provides for its jurisdiction both over Federal laws and laws applicable to Guam as passed by the Guam Legislature; and provides that Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure shall apply to the District Court of Guam and to appeals therefrom.

Section 1 of H. R. 8634 would amend subsection (b) of section 22 so as to make unnecessary trial by jury or the prosecution of offenses through indictment by a grand jury in the District Court of Guam,

unless and until so authorized by laws enacted by the Legislature of Guam. The committee calls attention to the fact that neither grand juries nor petit juries have ever been employed in Guam inasmuch as the island's legal traditions are derived from Spain, a civil law nation. The jury system, therefore, is virtually unknown to the Guamanian people. This bill would merely continue the existing situation until changed by action of the Guam Legislature.

Section 1 further provides that the terms "Attorney for the Government" and "United States attorney" as used in the Federal Rules of Criminal Procedure shall mean the attorney general of Guam or such other persons as may be duly authorized to act in his capacity. Section 2 of this bill would make the amendment provided for in section 1 effective as of August 1, 1950. Section 3 would provide that no conviction of a defendant in a criminal proceeding in the District Court of Guam heretofore had shall be reversed or set aside on the ground that the defendant was not indicted by a grand jury or tried by a petit jury. Section 4, a separability clause, provides that if any portion of this bill or the application thereof is found to be unconstitutional, the remainder of the act and the application of such provision shall not be affected.

By the terms of the Treaty of Paris, signed on December 10, 1898, and proclaimed on April 11, 1899, Guam was ceded by Spain to the United States. For the next 51 years it was administered as an unincorporated Territory of the United States by the Department of the Navy until July 1, 1950, and since then by the Department of the Interior. The Organic Act of Guam (Public Law 630, 81st Cong. of the United States, August 1, 1950) provides the framework upon which the government is administered.

REPORTS OF EXECUTIVE AGENCIES

The reports of the Department of the Interior and the Department of Justice respectively are set forth below in full and further explain the purpose of the bill:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., May 11, 1954.

Dr. A. L. MILLER,
*Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D. C.*

MY DEAR DR. MILLER: This will reply further to your request for the views of this Department on H. R. 8634, a bill to amend section 22 of the Organic Act of Guam.

I recommend that the bill be promptly enacted, with the amendments hereinafter indicated.

Section 22 of the Organic Act of Guam (48 U. S. C., sec. 1424) provides that the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, among others, shall apply to the district court of Guam and to appeals therefrom. Section 1 of H. R. 8634 would amend that section to provide that no provision of any such rules which authorizes or requires indictment by a grand jury or trial by jury shall be applicable to the district court of Guam, unless and until made so applicable by the Legislature of Guam. Section 2 of H. R. 8634 provides that section 1 shall be deemed to be in effect as of August 1, 1950, the date of enactment of the Organic Act of Guam (64 Stat. 384, 48 U. S. C., sec. 1421 et seq.). Section 3 provides that no conviction of a defendant in a criminal proceeding in the district court of Guam prior to the date of enactment of the bill shall be reversed or set aside on the ground that the defendant was not indicted by a grand jury or tried by a petit jury.

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Neither grand juries nor petit juries have ever been employed in Guam. Because the legal traditions of the Territory stem from Spain, a civil-law nation, the jury system is virtually unknown to the Guamanian people. Since juries have never been used by them, the enactment of H. R. 8634 would do no more than perpetuate the situation which now exists, and, in my opinion, clarify the intent of the Congress with respect to the use of juries in Guam.

Immediate enactment of the bill is required in the light of two recent decisions of the United States Court of Appeals for the Ninth Circuit. Very recently, in the cases of *Pugh v. United States* and *Hatchett v. Government of Guam*, in opinions filed February 26, 1954, and March 30, 1954, respectively, the Court of Appeals for the Ninth Circuit reversed two felony convictions for the reason, in each case, that the conviction was based upon an information and not upon an indictment. The *Pugh* case involved the violation of a law of the United States, while the *Hatchett* case concerned the violation of a law of Guam. Both cases arose in the District Court of Guam, which has certain local as well as Federal jurisdiction (48 U. S. C., sec. 1424 (a)). The court so ruled because the Federal Rules of Criminal Procedure, made applicable to the District Court of Guam by section 22 (b) of the organic act, require in rule 7 that certain crimes be prosecuted by indictment unless indictment is waived. The effect of the court's holding appears to be that all convictions of felonies heretofore had in the District Court of Guam may be set aside, upon appropriate motion of the defendant, unless indictment was earlier waived by him. A general jail delivery is therefore imminent unless H. R. 8634 is enacted. We are informed that 35 convicted felons, now imprisoned pursuant to either Federal or local law, are potentially affected by the *Pugh* and *Hatchett* decisions. It is clearly of critical importance that their release be prevented.

It is my view that the legislative history of the bill which became the Guam Organic Act (H. R. 7273, 81st Cong.), shows that the Congress, with the full concurrence of this Department, did not intend to provide for the use of grand juries or petit juries in Guam. This intention is shown, among other things, by the failure to provide for a jury trial in the organic act's bill of rights, or to provide for the application to the District Court of Guam of chapter 121 of title 28, United States Code, relating to the qualifications and manner of selecting jurors. The House and Senate committees considering the organic act appear to have considered that juries would not be used in Guam, for in their reports (H. Rept. 1677, 81st Cong., p. 13; S. Rept. 2109, 81st Cong., p. 13), they stated that:

"The bill of rights is modeled upon the Bill of Rights in the United States Constitution but does not expressly provide for trial by jury in Guam. Since Guamanians derive their tradition in law from Spain, a civil-law nation, they have little knowledge or experience in trial by jury. The Guam Congress could institute trial by jury if it so desired."

Because doubt subsequently arose as to whether this result had clearly been achieved, a section was included (sec. 35 (b)) in H. R. 6808 of the 82d Congress, the Guam omnibus bill, which would have clarified this point. Section 35 (b) of H. R. 6508 carried precisely the provision of section 1 of H. R. 8634. This Department reported favorably upon the bill in a letter to former Chairman Murdock, of the House Interior and Insular Affairs Committee, dated May 9, 1952, in which particular note was taken of section 35. H. R. 6808 failed of enactment, however.

Because of the Guamanians' civil law heritage, it seems to me entirely desirable to refrain from requiring jury trials in the territory. This is especially so, I think, so long as it is made clear, as H. R. 8634 would do, that jury trials could be instituted in the District Court of Guam at whatever time the Guam Legislature should choose. It should be noted that the constitutional guarantees of indictment by grand jury and trial by jury do not apply to Guam, since it is an unincorporated territory. We have examined the bill in the light of other constitutional questions which might be raised with respect to it and have concluded that it is unobjectionable on any such ground.

I appreciate that the *Pugh* and *Hatchett* cases do not hold that petit juries are required in the District of Guam. It is therefore not of as pressing importance that the law be clarified in this respect as it is in the case of grand juries. I think, it desirable, however, for H. R. 8634 to make reference to both grand and petit juries, in order to avoid any subsequent argument on this point.

I suggest, however, that H. R. 8634 be amended in two particulars. First, there is a danger that the *Hatchett* decision may be interpreted to exclude attorneys for the Government of Guam from prosecuting persons in the District Court of Guam for violations of the laws of Guam. It has thus far been the practice in the District Court of Guam for the United States attorney or his assistant to

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prosecute in Federal cases, but for attorneys for the Government of Guam to prosecute for violations of territorial law. This arrangement, in my opinion, is efficient and sound. But the statement in the *Hatchett* case that "but a single system of procedure is to be followed in respect to both types of cases in the District Court of Guam," casts doubt upon the correctness of such a division of the case-load, as do references in the Federal Rules of Criminal Procedure to the "United States attorney" and "attorneys for the government," the latter term being defined in rule 54 (c) so as to exclude attorneys for the Government of Guam. In order that territorial legal officers may continue to act with respect to territorial, as opposed to Federal, matters, I recommend that the bill be amended by striking out the words "Legislature of Guam.", on page 1, line 11, and inserting in lieu thereof the following:

"Legislature of Guam, and except further that the terms 'attorney for the government' and 'United States attorney', as used in the Federal Rules of Criminal Procedure, shall, when applicable to cases arising under the laws of Guam, mean the Attorney General of Guam or such other person or persons as may be authorized by the laws of Guam to act therein."

Secondly, although this Department considers that no serious question exists concerning the validity of H. R. 8634, I nonetheless believe that it would be desirable to add a separability clause. I therefore recommend that a new section 4 be added on page 2 of the bill, immediately following line 6, such section to read as follows:

"SEC. 4. If any particular provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby."

I hope very much that your committee will adopt these two amendments and that H. R. 8634 will be enacted promptly.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

ORME LEWIS,
Assistant Secretary of the Interior.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, May 26, 1954.

Hon. A. L. MILLER,
*Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice relative to the bill (H. R. 8634) to amend section 22 of the Organic Act of Guam.

Section 1 of the bill would amend section 22 of the Organic Act of Guam so as to make unnecessary trial by jury or the prosecution of offenses by indictment by a grand jury in the District Court of Guam unless and until so authorized by laws enacted by the Legislature of Guam.

Section 2 of the bill would make the amendment provided for in section 1 effective as of August 1, 1950.

Section 3 would provide that no conviction of a defendant in a criminal proceeding in the District Court of Guam heretofore had shall be reversed or set aside on the ground that the defendant was not indicted by a grand jury or tried by a petit jury.

The use of juries in Guam is not required by the Constitution. The Supreme Court has held that Congress may deny the right to grand jury indictment and petit jury trial in courts for unincorporated territories of the United States (see *Balzac v. Porto Rico*, 258 U. S. 298). Guam has not been incorporated into the United States. The bill of rights for Guam, contained in the organic act (48 U. S. C. 1421-1424), is modeled on the Bill of Rights of the United States Constitution, but deliberately excludes the provisions guaranteeing grand and petit juries. The explanation given for this in the legislative reports on the organic act was that "* * * Guamanians derive their tradition in law from Spain, a civil law nation, [and hence] they have little knowledge or experience in trial by jury. The Guam Congress could institute trial by jury if it so desired" (S. Rept. 2109, 81st Cong., 2d sess., p. 13). The inference that it was not intended to have juries in Guam is strengthened by the fact that there was no adoption of the provisions

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of the Judicial Code for selecting grand and petit jury panels, although other sections of the Judicial Code were explicitly incorporated.

The proposed amendments to the Organic Act of Guam contained in the bill have been thought necessary because of two recent decisions of the Court of Appeals for the Ninth Circuit holding that grand jury indictments are necessary in felony cases, and because one of the judges of that court (Chief Judge Denman) took the view that petit juries are also necessary (*Pugh v. United States*, and *Hatchett v. Guam*, decided March 30, 1954). The basis for the court's decision is that the Organic Act of Guam provides for a district court with jurisdiction of a district court of the United States as such court is defined in section 451 of title 28, United States Code, and original jurisdiction in all other causes in Guam which has not been transferred by the legislature to other court or courts established by it (48 U. S. C. 1424). The organic act also provides that the rules promulgated by the Supreme Court of the United States for the trial of civil, criminal, admiralty and bankruptcy cases (28 U. S. C. 2072; 18 U. S. C. 3771, 3772; 28 U. S. C. 2073; 11 U. S. C. 53) shall apply to the District Court of Guam. The Court of Appeals determined that since the rules to be applied in the District Court of Guam were the Federal Rules of Criminal Procedure, and those rules explicitly require indictments in felony cases, it is necessary to proceed in felony cases in the District Court of Guam by way of grand jury indictment. Although the majority of the court ruled that a petit jury must be provided only when "required by law," Chief Judge Denman took the separate view that so long as the District Court of Guam was given the "jurisdiction" of a United States district court, it was required to be in all major respects the same as any other such court, which meant that grand and petit juries were mandatory in felony cases if the defendant chose.

The first section of the proposed amendment would make clear that the decision of the ninth circuit in this matter would not have prospective effect. The use of grand and petit juries would not be mandatory in Guam, but if the Legislature of Guam desires to institute those procedures, it can do so.

Section 2 of the bill would provide, in effect, that persons who have already committed offenses but have not been charged, may be proceeded against by information, as has been the practice in Guam. Section 3 would provide, on the other hand, that those who have already been proceeded against by way of information and trial without a jury, rather than indictment and jury trial, cannot use such fact as a basis for attack on their convictions by appeal or collaterally. Thus sections 2 and 3 have retrospective effect.

Whether the bill should be enacted involves a question of policy concerning which this Department prefers to make no recommendation. However, with respect to sections 2 and 3, in view of the doubt that may be raised as to their validity because of their retrospective effect, the committee, if it gives favorable consideration to the provisions in question, may desire to include a severability clause in the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

RESOLUTION OF THE JUDICIAL COUNCIL OF GUAM

Also reproduced as a part of this report is the following resolution of April 21, 1954, from the Judicial Council of Guam endorsing H. R. 8634.

JUDICIAL COUNCIL OF GUAM

RESOLUTION

Whereas the Judicial Council of Guam was created by part I, Chapter VI, section 121 of the Code of Civil Procedure of Guam, as amended, and is composed of all judges of Guam courts, the chairman of the Committee on the Judiciary of the Guam Legislature, the attorney general of Guam, and the president of the Bar Association of Guam; and

Whereas, under date of February 26, 1954, the United States Court of Appeals for the Ninth Circuit in the case of *Bartholomew Moffett Pugh, Jr., v. United States of America*, and under date of March 30, 1954, in the case of *George B. Hatchett v. the Government of Guam*, filed opinions holding that the District Court of Guam is without jurisdiction in felony cases unless the accused is indicted by grand jury; unless waived; and

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Whereas such cases also hold that trial by petit jury is not required in Guam and that the District Court of Guam is without specific statutory authority to call a grand jury until authorized by legislation of the Guam Legislature; and

Whereas such opinions cast doubt on the legality of all convictions and acquittals in the District Court of Guam, involving felonies, in over 3 years of its existence, when indictment was not waived; and

Whereas the United States Congress made no provision for a jury system in Guam in the bill of rights in the Organic Act of Guam but have adequate reasons for such determination and stated in the committee reports that the Guam Legislature could establish such a system if it so desired; and

Whereas the Guam Legislature has considered legislation to establish a jury system, but such legislation was not reported out of committee; and

Whereas the Judicial Council of Guam is of the view that the United States Congress did not intend that persons accused of felonies in Guam should be indicted or tried by jury in the absence of legislation by the Guam Legislature based upon local experience and resources; and

Whereas the Hon. John P. Saylor, chairman of the Subcommittee on Territorial and Insular Possessions, Committee on Interior and Insular Affairs, House of Representatives, has introduced H. R. 8634, 83d Congress, 2d session, having for its purpose an amendment to subsection (b) of section 22 of the Organic Act of Guam, retroactive to August 1, 1950, to carry out the original intent of the United States Congress; and

Whereas the enactment of such amendment is vital if the public interest is to be properly served and a jail delivery avoided: Now, therefore, be it

Resolved by the Judicial Council of Guam at its regular meeting held April 21, 1954, That H. R. 8634 has the full support and endorsement of such council and the council hopes for its speedy enactment, and be it further

Resolved, That copies of this resolution signed by the chairman and vice chairman and attested by the secretary be forwarded by the chairman to the Hon. John P. Saylor and to the Secretary of the Interior.

PAUL D. SHRIVER,
Chairman.

JOSE V. MANIBUSAN,
Vice Chairman.

Attest:

V. V. MAMBY, *Secretary.*

FEDERAL COURT DECISIONS ON FILE

Copies of the decisions of the United States Court of Appeals for the Ninth Circuit dated February 26, 1954, and March 30, 1954, in which *Bartholomew Moffett Pugh, Jr. v. United States of America*, and *George B. Hatchett v. The Government of Guam*, were involved are on file with the Committee on Interior and Insular Affairs. The decisions emphasize the urgency for the immediate enactment of this legislation.

CONCLUSION

The Committee on Interior and Insular Affairs is unanimously of the opinion that the enactment of H. R. 8634 would be in the best interests of the people of Guam and of the people of the United States as a whole. Its enactment will strengthen the Organic Act of Guam and will retain in the Guamanians the right to decide on the procedures by which criminal cases on Guam may be prosecuted.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

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SECTION 22 OF THE ORGANIC ACT OF GUAM (64 STAT. 389)

(b) The rules heretofore or hereafter promulgated and made effective by the Supreme Court of the United States pursuant to section 2072 of title 28, United States Code, in civil cases; section 2073 of title 28, United States Code, in admiralty cases; sections 3771 and 3772 of title 18, United States Code, in criminal cases; and section 30 of the Bankruptcy Act of July 1, 1898, as amended (title 11, U. S. C., sec. 53), in bankruptcy cases; shall apply to the District Court of Guam and to appeals therefrom. **[]**; except that no provisions of any such rules which authorize or require trial by jury or the prosecution of offenses by indictment by a grand jury instead of by information shall be applicable to the District Court of Guam unless and until made so applicable by laws enacted by the Legislature of Guam, and except further that the terms "attorney for the government" and "United States attorney", as used in the Federal Rules of Criminal Procedure, shall, when applicable to cases arising under the laws of Guam, mean the Attorney General of Guam or such other person or persons as may be authorized by the laws of Guam to act therein.

